



Task Force on Trial Court Employees

Meeting Minutes

December 7 and 8, 1998

Westgate Hotel, San Diego, California

TASK FORCE MEMBERS:

PRESENT:

Hon. James A. Ardaiz, Chair
Ms. Pamela Aguilar
Marshal Barbara J. Bare
Hon. Aviva K. Bobb
Mr. Gary Cramer
Hon. Charles D. Field
Ms. Karleen A. George
Ms. Diane Givens
Ms. Mary Louise Lee
Mr. Ronald G. Overholt
Ms. Christine E. Patton
Sheriff Charles Plummer
Mr. John Sansone
Mr. Larry Spikes
Mr. Robert Straight
Mr. Mike Vargas
Mr. Robert D. Walton

ABSENT:

Mr. Steve Perez

PRESENTERS:

Mr. Peter Lujan, California Department of Industrial Relations Mediation/Conciliation Service, (conference call)

ADMINISTRATIVE OFFICE OF THE COURTS STAFF:

Ms. Judith A. Myers, Director, Human Resources Bureau
Ms. Deborah Brown, Attorney, Council and Legal Services Division
Ms. Tina Burkhart, Court Services Analyst, Trial Court Services Division
Ms. Noema Olivas, Secretary, Human Resources Bureau
Ms. Hazel Ann Reimche, Human Resources Analyst, Human Resources Bureau (not present)
Ms. Sharon Smith, Staff Analyst, Human Resources Bureau

FACILITATOR:

Ms. Liz Schiff, Organizational Development Specialist, Human Resources Bureau, Administrative Office of the Courts

Monday, December 7, 1998

I. OPENING REMARKS

Justice James A. Ardaiz, chair, called the meeting to order at 10:18 a.m. in San Diego and welcomed everyone to the seventh task force meeting.

II. PUBLIC COMMENT PERIOD

Justice Ardaiz introduced one guest during the public comment period.

- Ms. Darlene Stull, President, American Federated State, County, and Municipal Employees (AFSCME) Local 3500, expressed concern about issues of importance to the San Diego County Court Clerks Association, including civil service benefits.

III. REVIEW: NOVEMBER TASK FORCE MEETING AND ANNOUNCEMENTS

Justice Ardaiz summarized the November 15–16, 1998, meeting, which included discussion on (1) revised Classification and Compensation Assumptions; (2) Working Classification and Salary Models; (3) an overview of the revised Employment Protection Model; (4) information on collective bargaining from the California State University system and the executive branch of California state government; (5) an update on the survey about trial court employees; (6) agreement on a revised definition of “court employee” for purposes of the survey; and (7) identification of issues to be addressed in recommendations on the meet and confer process.

Justice Ardaiz identified the following objectives for the December meeting:

- Provide an opportunity for communication through public comment periods;
- Review, discuss, and consider members’ input on the revised staff proposal for an employment protection approach;
- Provide educational information on collective bargaining;
- Discuss and evaluate issues related to the meet and confer process under the employment status options; and
- Review the process for the advisory vote of trial court employees regarding their status proposed by the advisory vote subcommittee.

Ms. Liz Schiff reviewed the agenda of the meeting and its ground rules. Ms. Schiff then reviewed the revised Classification and Compensation Assumptions, and Ms. Christine E. Patton moved that the words “unfunded by state”, be deleted. Marshal Barbara J. Bare seconded the motion. The task force adopted the revised Classification and Compensation Assumptions.

Ms. Judith A. Myers reviewed the proposed 1999 task force meeting dates and locations. The January meeting schedule was corrected to the dates of January 26, 27, and 28. The task force agreed to post the 1999 dates to the Web site.

Justice Ardaiz asked if there were any additions or corrections to the November meeting minutes. Mr. Gary Cramer suggested that “Municipal Court” be added after the words “Los Angeles” on page 2, third bullet. Mr. Cramer’s suggestion was incorporated and Ms. Bare moved that the November meeting minutes be accepted as revised. Ms. Mary Louise Lee seconded the motion. No other additions or corrections were made to the November minutes, which were adopted as amended.

IV. REVIEW: OTHER COLLECTIVE BARGAINING SYSTEMS

Ms. Myers reviewed a matrix of collective bargaining information regarding the University of California (UC), California State University (CSU), executive branch, and appellate court systems of California state government. Ms. Myers also summarized a telephone conversation with the Department of Finance's Higher Education Unit on the Higher Education Compact and the collective bargaining process involving the University of California, California State University, unions and state budget process.

V. EDUCATIONAL SESSION: COLLECTIVE BARGAINING AND HISTORY OF MEET AND CONFER IN THE TRIAL COURTS

Ms. Deborah Brown reviewed the history of the meet and confer process in the trial courts and more specifically, how the Meyers-Milias-Brown Act (Gov. Code, §§ 3500–3510), the Court Employee Labor Relations Rules (Rules 2201–2210 of the California Rules of Court), and Government Code sections 68650 through 68655 apply to the trial courts and trial court employees.

Ms. Brown briefly described the four major public employment labor relations statutes in California: (1) the Higher Education Employer-Employee Relations Act (HEERA), which covers the University of California and California State University and their employees; (2) the Dills Act (also known as the State Employer-Employee Relations Act (SEERA)), which covers the state executive branch and most of their employees; (3) the Educational Employment Relations Act (EERA), which covers the public schools (K-12) and community colleges and their employees; and (4) the Meyers-Milias-Brown Act (MMBA), which covers local government agencies and their employees.

The Meyers-Milias-Brown Act (MMBA) was adopted in 1968. In general, the MMBA requires the governing body of a public agency to meet and confer in good faith regarding wages, hours, and other terms and conditions of employment with representatives of recognized employee organizations. In 1988, the MMBA was amended to add, “municipal and superior court employees shall be considered employees of the county for all matters within the scope of representation.” (Gov. Code, § 3501.5).

In 1992, in the case of *American Federation of State, County, and Municipal Employees, AFL-CIO, Local 3300 v. County of San Diego* (1992) 11 Cal.App.4th 506 (“*AFSCME*”), the Court of Appeal held that the duty under the MMBA to meet and confer with trial court employee organizations applied only to the county and was limited to “matters within the scope of representation, which only includes matters the county has authority to agree upon, i.e., economic benefits . . .” (*AFSCME, supra*, at p. 518.) In *AFSCME* the court found that the trial court was not a “public agency” within the meaning of the MMBA. Therefore, as to matters within the authority of the court, i.e., noneconomic benefits, neither the county nor the court had a duty to meet and confer with trial court employee organizations over these matters.

In April 1997, the Judicial Council adopted the Court Employee Labor Relations Rules (Rules 2201–2210 of the California Rules of Court), effective January 1, 1998, which extend to trial

court employees and the trial courts the right and the responsibility to meet and confer in good faith over matters the court has authority to determine. Assembly Bill 1438 (Escutia; Stats. 1997, ch. 857), codified at Government Code sections 68650 through 68655, acknowledges the adoption of the rules and provides that they have the force of law, notwithstanding any other provision of law. Ms. Brown summarized the Court Employee Labor Relations Rules and Government Code sections 68650 through 68655.

VI. OVERVIEW: MEET AND CONFER IN THE TRIAL COURTS

Ms. Myers presented an overview of the meet and confer process in the trial courts, including past and current practices.

She discussed several factors currently affecting the trial court meet and confer process, such as: state funding of the trial courts (AB 233); AB 1438 (Escutia; Stats. 1997, ch. 857); rule 2201–2210 of the California Rules of Court, relating to labor relations; Senate Constitutional Amendment 4, relating to the voluntary unification of municipal and superior courts; and rule 2520, which requires countywide trial court personnel plans.

Justice Ardaiz clarified that staff references to the terms “county employee associations” and “unions”, refer to recognized employee representatives for the purposes of meet and confer.

Ms. Myers mentioned that the Administrative Office of the Courts has collected a number of memoranda of understanding (MOUs) between trial courts and counties, that refer to the task force and generally state that the provisions of such MOUs are effective pending task force deliberations and decisions on employment status.

In summary, Ms. Myers emphasized the fluid process of meet and confer practices in the trial courts and the changing nature of court and county relationships.

VII. DISCUSSION: MEET AND CONFER PROCESS

The task force formed groups consisting of labor and management representatives, to review and discuss the meet and confer process. The labor and management groups then reported on their discussions of meet and confer issues.

VIII. CLOSING REMARKS

Justice Ardaiz adjourned the meeting at 4:10 p.m.

Tuesday, December 8, 1998

I. OPENING REMARKS AND REVIEW OF AGENDA AND OBJECTIVES

Justice Ardaiz called the meeting to order at 8:13 a.m.

II. PUBLIC COMMENT PERIOD

Justice Ardaiz introduced one guest during the public comment period.

- Mr. Don Smith, President, San Diego County Court Clerks Association, submitted a petition urging the task force to consider civil service protections.

III. REVIEW: CLASSIFICATION AND COMPENSATION ASSUMPTIONS

Ms. Schiff reviewed the revised Classification and Compensation Assumptions as adopted on December 7, 1998. The assumptions were approved for posting to the Web site.

IV. DISCUSSION: MEET AND CONFER PROCESS (continued)

Ms. Schiff presented a side-by-side summary of the two small groups' discussions of the meet and confer process in the trial courts.

The following basic principles on the meet and confer process were developed by the task force:

- Representation units that negotiate salary and benefits are local.
- Whoever represents the employer should have the authority to make decisions and reach tentative agreements.
- In terms of representation, the status quo should remain for unrepresented employees.
- All bargaining for each represented unit shall occur at one table.
- All economic and noneconomic issues should be resolved in the same process for each unit.
- A recommendation by the task force for a particular employment status (state, county, court or other) may require appropriate changes to existing statutes and rules

The task force agreed to adopt these basic meet and confer principles and continue the discussion at the next meeting.

V. PROPOSAL: TRIAL COURT EMPLOYEE ADVISORY VOTE SUBCOMMITTEE

Mr. Ronald G. Overholt and Ms. Mary Louise Lee, co-chairs of the Advisory Vote Subcommittee, proposed the following process for the advisory vote of trial court employees regarding their employment status:

- Utilize a neutral agency to conduct, tabulate, and supervise the advisory vote;
- Use an entity that works with management and unions;
- Consult with the Department of Industrial Relations Mediation/Conciliation Service; and
- Continue the charge of the subcommittee to resolve technical issues relating to the process.

Mr. Peter Lujan, of the Mediation/Conciliation Service joined the meeting via conference call to answer questions.

Justice Ardaiz noted that the Trial Court Funding Act does not specify when the advisory vote of employees should take place. The full task force will address the timing of the advisory vote at a later time.

VI. EMPLOYMENT PROTECTION MODEL: SUMMARY OF TASK FORCE COMMENTS, GENERAL ISSUES, AND STAFF PROPOSAL

Justice Ardaiz reviewed general comments received in letters from the task force members regarding the revised Employment Protection Model C. Two overall issues were raised: (1) Mr. Overholt and Ms. Patton suggested keeping the model simple and leaving the details to individual trial courts and (2) SEIU expressed concerns that they felt should be addressed regarding the proposed employment protection system model.

Justice Ardaiz summarized the following issues raised by SEIU as concerns that should be addressed:

- Does employment Protection System Model C go beyond the scope of the task force?
- Is it premature to address employee protection issues before the survey is completed and a recommendation is made regarding the employment status of state, county, court?
- The task force is to recommend a broad personnel structure and the Legislature is to address a personnel system. In addressing areas such as just cause, progressive discipline, and hearing requirements, is the task force entering into legislative province?
- Should the task force complete in chronological order its duties as stated in the Trial Court Funding Act?

Justice Ardaiz addressed these concerns as follows:

- A fundamental component of any personnel structure is the definition of employee rights, including whether or not the employees' status is at will, for cause, civil service, etc.

- The task force should not prematurely determine a recommendation regarding the specific employment status of trial court employees, because (1) the task force must identify and develop personnel structures for all employment status options in order for employees to make an educated choice when participating in the advisory vote; (2) the task force must develop each structure because the state and county employment status options require concurrence from these entities and the court, and all the options must first be understood by these parties; (3) the structures of state and court employment statuses do not currently exist and must be developed by the task force.
- The task force model addresses the issue of employment protection from a broad policy standpoint through determining the core elements of an employment protection system and creating a self-governance system for the trial courts. The task force model does not recommend details about the system, only its framework.
- The task force determined at the third meeting in San Diego the integral components to be included in a personnel structure. An employment protection system framework for the trial courts was included as a critical component in the recommendation for a personnel structure.
- Staff presented Employment Protection System Model A (quoted below) at the Redding meeting. This model retained the status quo and was clearly rejected by the task force members.

Model A stated:

- To the extent an employment protection system is not excluded by statute or constitution, it is legally available.
- Employees maintain their current employment protection systems, unless barred by statute or constitution.
- Existing local systems remain in place that range from at will to those modified by statute, agreement, or personnel policy.
- Employment protection systems may be modified through traditional methods, such as negotiation.

Ms. Lee stated that without the survey results her concern was that the task force should know what systems currently exist to ensure that employees do not lose employment rights.

Justice Ardaiz agreed with Ms. Lee but stated that the model proposes a floor rather than a ceiling for employee rights and would in effect bring employees currently in at-will systems to a cause standard for termination. Therefore, if this model is adopted a new minimum standard will be created and those existing systems “above the floor” will remain in place and not be impacted by the model.

Mr. Cramer stated his concern about the level of detail in the task force’s Employment Protection System Model. Ms. Karleen A. George suggested that survey information is not necessary to the development of an employment protection system model. The protective language states that no employee’s rights will be reduced. Several task force members expressed the view that a recommendation from the task force that excluded the framework of employee rights would be

incomplete; therefore the task force would not be fully meeting its mandate to recommend a personnel structure for the trial courts.

The task force discussed the jurisdictional question before the group. Sheriff Charles Plummer moved that recommendations on employee rights be a part of the personnel structure because they are within the legislative mandate of the task force. Ms. George seconded the motion.

Justice Ardaiz asked if all were in favor of the motion. The motion to proceed with a recommendation to define trial court employee rights was unanimously approved with no abstentions.

VII. DISCUSSION OF EMPLOYMENT PROTECTION MODEL: SPECIFIC ISSUES

Justice Ardaiz and Ms. Brown presented Employment Protection Model D and addressed specific comments received from the task force. They reviewed the progression of the Employment Protection System Models from Model A, which was the baseline proposal, through the new Model D, which incorporated task force comments.

Employment Protection System Model D was discussed, revised, and generally accepted. Justice Ardaiz announced the new Model E would be sent to the task force and members agreed to submit any further written comments to staff by December 22, 1998. This date subsequently was extended to December 24, 1998.

VIII. CLOSING REMARKS AND RECAP

Justice Ardaiz reviewed the following task force accomplishments achieved during the meeting:

- Received educational information regarding the meet and confer process and began discussion of issues;
- Established basic meet and confer principles, which will be further reviewed;
- Reviewed the Advisory Vote Subcommittee's proposal;
- Discussed the Employment Protection Model D; and
- Unanimously resolved the jurisdictional issue to include recommendations that provide a framework for an employment protection system as a component of the personnel structure.

Justice Ardaiz adjourned the meeting at 2:23 p.m.